

**Pennsylvania State Association of Boroughs and Local 464, Bakery, Confectionery & Tobacco Workers International Union, AFL-CIO, Petitioner. Case 4-RC-15092**

10 August 1983

**DECISION AND ORDER**

BY MEMBERS JENKINS, ZIMMERMAN, AND  
HUNTER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Rudi Grueneberg of the National Labor Relations Board on 24 June and 8 July 1982. Following the hearing and pursuant to Section 102.67(h) of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 4, this proceeding was transferred to the Board for a determination of whether the Employer, Pennsylvania State Association of Boroughs (also called PSAB or Association), is a political subdivision which is exempt from the jurisdiction of the Board under Section 2(2) of the Act. Thereafter, the Employer and the Petitioner filed briefs stating their respective positions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, including the briefs filed by the Employer and the Petitioner, the Board finds:

The Association, a nonprofit corporation<sup>1</sup> established in 1911, is engaged in the performance of services for the boroughs<sup>2</sup> of Pennsylvania. The main function of the Association is to sponsor and monitor legislation pending before the state and Federal legislatures pertaining to or of interest to the boroughs and to serve as lobbyist for the boroughs. In addition, the Association holds conferences on various subjects of interest to borough officials, sells various publications, and offers its members various insurance programs, such as a workers' compensation insurance plan and an unemployment compensation plan. Since under Pennsylvania law boroughs can only take those actions which are specifically authorized by statute, boroughs were unable to become members of the As-

sociation until 1915 when the Governor of Pennsylvania signed an act authorizing and empowering the boroughs of Pennsylvania "to organize a State Association of Boroughs, for the purpose . . . of advancing the various interests of said boroughs, promoting remedial legislation, and discussing any and all topics relating to the welfare and conduct of the same and for the purpose of providing for a uniform and economical method of administering the affairs of the respective boroughs." P.C. 844 No. 392.<sup>3</sup>

Under its constitution, membership in the Association is open to any borough or incorporated town in Pennsylvania as well as any county borough association which consists of at least five member boroughs in good standing in the Association and situated in the same county or in two or more contiguous counties.<sup>4</sup> At present 874 out of the 970 boroughs in Pennsylvania belong to the Association and pay dues which constitute 30 percent of the Association's yearly income.

The general management of the Association is vested in a board of directors, composed primarily of a president and two vice presidents elected annually by the membership of the Association and one borough official selected by each county association.<sup>5</sup> As to the duties of the board of directors, the constitution provides as follows:

The Board of Directors shall determine the general policies of this Association; shall supervise and direct the activities of the officers of the Association; shall supervise the administration of the Association office by the Executive Vice President; shall establish the positions and fix the rate of pay for employees of the Association; shall adopt a budget for the Association's operations for each fiscal year; shall determine the various standing committees to be appointed; and perform such other duties as are usually vested in corporate board of directors, when not inconsistent with the provisions of this Constitution.

In addition, the constitution provides for an executive committee, consisting of the officers, immedi-

<sup>3</sup> Although this statute has been subsequently amended, its substance, in relevant part, has remained unchanged.

<sup>4</sup> The constitution also allows any person, firm, corporation, or council of governments to apply for associate membership, but such members have no voting rights.

<sup>5</sup> The constitution requires that the officers must be, at the time of their election, a bona fide official of a member borough, holding the office of either mayor, councilman, solicitor, manager, engineer, secretary, controller, or treasurer of such borough. In addition the constitution states a preference that the borough officials selected by the county associations to the board of directors have been elected to their borough office by the electorate in the borough rather than appointed to their office by some public official.

<sup>1</sup> Prior to 1959, PSAB was unincorporated.

<sup>2</sup> A borough is the equivalent of an incorporated town or city.

ate past president, and six members of the board of directors, to exercise the powers of the board between meetings of the board.

The day-to-day management of the Association is vested in an executive vice president, who is appointed by and serves at the pleasure of the board of directors. The constitution provides for the duties of the executive vice president as follows:

He shall manage the affairs of the Association under the general direction of the Board of Directors; shall appoint and supervise and may discharge the various employees of the Association who are under his control and supervision; and shall be responsible for the proper and efficient conduct of the work of the Association. He shall annually or oftener furnish a detailed report of the activities and financial condition of the Association to the officers and the Board of Directors. He shall have the responsibility of proposing policies, programs and services for the consideration of the Board of Directors. He shall represent the Association in all matters pending before the Legislature or any committee thereof and before any governmental department, board or commission, and subject to the will of the Board of Directors, shall have the power to employ attorneys or assistants and to contract with outside consulting services when necessary. He shall edit, publish and distribute the official publications of the Association.

The executive vice president's staff consists of an assistant executive vice president for administration and an office manager, and 12 full- or part-time employees. Applicable to all employees is a six-page document entitled "Personnel Regulations," formulated by the board of directors, which sets forth the Association's policies regarding hours of work, leave, overtime, benefits, and other terms and conditions of employment, including a grievance procedure which provides that the employee first present his problem to his immediate supervisor, then to the executive vice president, and then to the administrative committee of the board of directors for a final decision. Raises in employee pay or changes in any personnel policies are initiated by the executive vice president or the administrative committee of the board of directors, who makes recommendations to the board of directors or executive committee for its approval or disapproval.<sup>6</sup> It is unclear from the record the extent to

<sup>6</sup> It appears that the board of directors usually adopts the recommendations of the executive vice president. However, on one occasion the board refused to adopt a recommendation of former Executive Vice President Lee Decker pertaining to the liberalization of vacation days.

which the board of directors or the executive committee is involved in the hiring, discharging, or disciplining of employees, except that under the grievance procedure an employee can appeal his discipline or discharge to the administrative committee of the board for final decision.

The Association has no control over the selection of borough officials to the board of directors by county associations. Consequently, there is no way for the Association or the board of directors to remove a member of the board; only if the member of the board loses his elected or appointed position with his borough is he ineligible to be the county association's representative on the board.

By letter dated 22 February 1971, the Association was exempted by the Pennsylvania Department of Revenue from paying state sales tax on the basis that the Association was a political subdivision of the State.

Under Section 2(2) of the Act, "any State or political subdivision thereof" is excluded from the definition of "employer" and thus exempted from the jurisdiction of the Board. Although the term "political subdivision" is not defined in the Act, the Supreme Court has held that the exemption applies only to entities "that are either (1) created directly by the state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate." *NLRB v. Natural Gas Utility District*, 402 U.S. 600 (1971).

Based on the facts of this case, we find that the second part of this test has been met and that the Association is thus a political subdivision exempted from the Board's jurisdiction.

The Association is governed<sup>7</sup> by officers and a board of directors, all of whom must be either elected or appointed officials of a borough. In turn, the voting membership of the Association which chooses the officers is composed only of borough or county association representatives—all public officials—and the county associations which choose the members of the board of directors are public entities. Moreover, it is the individual boroughs and county associations, and not the Association, which retain the power to remove their representatives from the board or to remove an individual from his borough office, thereby making him ineligible to serve as an officer or board member. This connection between the governing body of the As-

<sup>7</sup> Although the executive vice president, who is not a borough official, oversees the staff and daily activities of the Association, the record clearly establishes that it is the board of directors, and not the executive vice president, which formulates the policies of the Association both as to the programs and lobbying efforts of the Association and as to personnel matters.

sociation and the boroughs and county associations is alone sufficient to establish that the Association is administered by individuals who are responsible to public officials or to the general electorate. See *Northern Community Mental Health Center*, 241 NLRB 323 (1979), and *Community Health and Home Care, Inc.*, 251 NLRB 509 (1980).

Moreover, the record reveals other factors which indicate the Association's public character. The Association exists only to advance the interests of boroughs, which are political subdivisions of the State, and could not have become an effective representative of the boroughs without the enabling legislation authorizing boroughs to become members of and pay dues to the Association. In addition, as noted above, all of the voting members of the Association as well as its officers and board of directors are public officials. Further, the Commonwealth of Pennsylvania has exempted the Association from paying sales tax as a political subdivision of the State. In light of these factors, as well

as the accountability of the officers and the board of directors to public officials or to the general electorate, we find that the Association is a political subdivision within the meaning of Section 2(2) of the Act and is thus exempt from Board jurisdiction.<sup>8</sup> Accordingly, we shall dismiss the instant petition.<sup>9</sup>

#### ORDER

It is hereby ordered that the petition be, and it hereby is, dismissed.

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<sup>8</sup> In light of this finding, we find it unnecessary to determine whether the Association was also created directly by the State so as to constitute a department or administrative arm of the State, or has sufficient control over the employment conditions of its employees to enable it to effectively bargain with a labor organization as the employees' representative.

<sup>9</sup> The Association has filed a motion to reopen the record to receive a letter to the Association from the Internal Revenue Service dated 16 September 1973, concluding that the Association is a "wholly-owned instrumentality of its member boroughs which are political subdivisions of the State of Pennsylvania." In view of our finding that the Association is exempt from the Board's jurisdiction as a political subdivision under the present record, we deny the Association's motion.